APPEAL NO. 040938
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 30, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury and that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The claimant appealed, arguing that she relied on the Texas Workers' Compensation Commission (Commission) to guide her through the process and that she performed repetitive duties while employed by the employer which caused her to sustain a compensable injury. The carrier responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer specifically found that the claimant's employment activities of using a computer keyboard to make entries documenting customer service calls were not shown to be repetitive or traumatic. We conclude that the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. The hearing officer found that the date the claimant knew or should have known that her claimed injury was related to her employment was _____, and this finding was not appealed. Additionally, the hearing officer

found that the claimant's last injurious exposure to the work-related activities she claims caused her injury was with the employer on January 2, 2003. Section 409.001 provides that an employee or a person acting on the employee's behalf shall notify the employer of an injury that is an occupational disease not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The hearing officer found that November 24, 2003, was the first notice to either the carrier or the employer of the claimant's claimed injury. The claimant argues on appeal that she understood that the Commission was going to notify her employer of the claim when she filled out forms with the Commission on _____.

Failure to timely notify the employer of an injury, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier of liability for the payment of benefits for the injury. Section 409.002. Whether, and, if so, when notice is given is a question of fact for the hearing officer to determine. Conflicting evidence was presented on this issue. The hearing officer determined that the claimant did not provide timely notice of any injury to the employer and that no good cause for the failure to do so was shown. Those findings are supported by the evidence and are not so contrary to the great weight and preponderance of the evidence as to compel their reversal on appeal. Cain, supra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge